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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment reserved on :07.5.2014*
Judgment delivered on :20.05.2014

+ CRL.A. 142/2006

PAWAN KUMAR KOHLI Appellant

Through Appellant in person.

versus

SUESH KUMAR KOHLI AND ANR. Respondents

Through Ms.Kusum Dhalla, APP for the
State.

Ms.Inderjeet Sidhu, Advocate for
R-2.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 This appeal is directed against the impugned judgment dated 22.3.2004 of the learned Additional Sessions Judge which had set aside the order passed by the learned M.M. dated 31.7.2003. Learned M.M. on the complaint filed by the appellant (Pawan Kumar Kohli) under Section 499 of the IPC had convicted the respondent (Sudesh Kumar Kohli) and had held him guilty under Section 500 of the IPC and sentenced him to undergo SI for a period of 6 months. The impugned

judgment had reversed the order of the Magistrate and had acquitted the respondent. This judgment is the subject matter of the present appeal.

2 Record reveals that on 20.7.2003 a complaint had been filed by the respondent before the SHO of local police station West Patel Nagar wherein the gist of the complaint was that because of a dispute between the two cousins i.e. the appellant and the respondent relating to a property, the respondent was aggrieved by the acts of the appellant. The appellant (present in person) had pointed out the defamatory lines in the aforementioned complaint. They read as under:

(a) Yeh log badmash kism ke log hain.

(b) Yeh ladka aur iski maa bahut badchalan hai.

(c) In logo ki badmasho se santh-ganth hai.

(d) Ek makaan to hamara inhone badmasho ke sath mil kar harap liya hai upar se hamain pareshan kar ke niche ka makaan bhi hathiyana chahte hai.

3 It is argued that the language used in the complaint is per se defamatory and the impugned judgment relying upon Explanation 4 to Section 499 of the IPC; giving benefit to the respondent and thereby acquitting him of the charges leveled against him under Section 499 of

the IPC has committed a grave illegality. The appellant has placed reliance upon a judgment of a Bench of this Court in 1982 Cri. L.J. 167 (Delhi) Shamsher Singh Vs. H.K.S. Malik, Additional District & Session Judge, Delhi ; another judgment of a Bench of the Patna High Court reported as 1965 (2) CrL. L.J. 693 (Vol.71, C.N. 226) Sardar Amar Singh Vs. K.S.Badalia. Reliance has also been placed upon a judgment of the Allahabad High Court reported as 29 Cr.L.J. 1928 Mohan Lal Vs. Ram Charan as also the judgment reported as 9 A. 420=7 A.W.N (1887) 39 Vol.1 Queen Empress Vs. McCarthy to support his argument that Explanation 4 to Section 499 of the IPC will not apply where the words used and form the basis of a charge are per se defamatory.

4 Needless to state that these arguments have been refuted by the learned counsel for the respondent. It is pointed out that the impugned judgment does not call for any interference as there was no intent on the part of the respondent to defame the appellant. It is pointed out that this intent has to be gathered from various circumstances and these have rightly been noted by the trial judge not to have been established; submission being that there was a gamut of inter se litigations pending between the two cousin brothers relating to their properties and it was in

this background that the respondent bonafidely for the safety of his life and his family had made this complaint in the local police station which was only a private complaint; admittedly there was no public circulation of this document. Reliance has been placed upon AIR 1966 Orissa 15 (V 53 C 6) Dhruba Charan Khandal Vs. Dinabandu to support a submission that in this background there could be no defamation. Submission being that on count does the impugned judgment call for any interference.

5 Record has been perused.

6 Record reveals that complainant in support of his complaint examined two witnesses (CW-1 and CW-2) who had proved the complaint, the complaint was taken on record through secondary evidence. The complainant himself had come into witness box as CW-3. His testimony has been perused. While reiterating the complaint he in his cross-examination has admitted that that he came to know about this complaint when the police officials came to his house; he had gone to the police station where the respondent was also present apart from his mother and some police officials; the complaint was written in hindi but it had been read over by the investigating officer. Submission of the

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learned counsel for the appellant being that this complaint which had been read over by the investigating officer in the presence of so many persons containing defamatory language had lowered the reputation of the appellant and his mother calling for a conviction of the respondent under Section 499 of the IPC.

7 In the course of trial on 15.9.2000 the Court had examined one witness namely Rajiv Kohli. The petitioner points out that Rajiv Kohli was a common relation of both the parties and the Sessions Judge not relying upon his version and discarding his testimony has committed an illegality as he was a court witness.

8 This submission of the learned counsel for the petitioner is without any force. Record shows that Rajiv Kohli had been examined on 15.9.2000 and although he has been mentioned as a court witness yet the record reveals that nowhere did the Court think it fit to summon Rajiv Kohli as a court witness. Record in fact reveals that Rajiv Kohli had come loitering in the Court in some other connected matter when the court on its own chose to examine him. This examination of Rajiv Kohli by the court appears to be wholly illegal without any procedure and without any request of either side to examine him. In fact the record

reveals that Rajiv Kohli had been examined on 15.9.2000 but the order sheet of 15.9.2000 does not record as to how and in what circumstances he came to be examined. Learned counsels for the parties are also not able to assist the Court on this point. The Sessions Judge has thus rightly discarded the version of Rajiv Kohli.

9 Section 499 of the IPC reads herein as under:

“499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

.....
Explanation 4.—No imputation is said to harm a person’s reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.”

10 There are 10 exceptions which are attached to Section 499.

Eighth Exception and Ninth Exception are both relevant. They read herein as under:

“Eighth Exception.—Accusation preferred in good faith to authorised person.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful

authority over that person with respect to the subject-matter of accusation.

Illustration- If A in good faith accuse Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, and child, to Z's father—A is within this exception.

Ninth Exception.—Imputation made in good faith by person for protection of his or other's interests.—It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustrations (a) A, a shopkeeper, says to B, who manages his business—"Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty". A is within the exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b) A, a Magistrate, in making a report of his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception.

11 The illustrations appended to these Exceptions are also relevant.

12 It is admitted that both the parties i.e. the appellant and the respondent were at war; they had a property dispute pending between them. This has been admitted by the appellant as also by the respondent. The respondent in good faith and out of fear and in the protection of his interest and the interest of his family had made a complaint in the local police station detailing the conduct of the

appellant. By no stretch of imagination can it be said that this complaint was with any intention or purpose to defame or to lower the reputation of the petitioner at that time when it was written at the local police station. A complainant party who is aggrieved by the acts of another is legally permitted to make a complaint before the competent authority which in this case was the local police station. It is also not the case of the petitioner that this letter was circulated; it was a letter in the form of a complaint written by the respondent to the SHO. No intent to harm the reputation of the respondent can be deciphered from this complaint. It was a general complaint wherein the respondent had expressed his grievance about the conduct and behavior of the petitioner. The background in which it was written i.e. the parties being at war over inter se disputes over a common property is also relevant.

13 The Apex Court in [2010] 7 SCR 128 Jeffrey J. Diermeier and Anr. Vs. State of West Bengal & Anr. had noted that the essential ingredients of the offence of defamation—harm caused to the reputation of a person must necessarily entail an imputation and such imputation must have been made with the intention of harming or knowing or having reason to believe that it will harm the reputation of the person

about whom it is made.

14 In this background it cannot be said that the impugned judgment acquitting the respondent suffers from any vice.

15 Appeal is without any merit. Dismissed.

INDERMEET KAUR, J

MAY 20, 2014

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